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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,946	08/08/2001	Mark J. Evans	0630/1G703US2	3104
7278	7590	06/30/2004	EXAMINER	
DARBY & DARBY P.C.			PAK, YONG D	
P. O. BOX 5257			ART UNIT	
NEW YORK, NY 10150-5257			PAPER NUMBER	

1652

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/924,946

Applicant(s)

EVANS ET AL.

Examiner

Yong D Pak

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 11 and 12.

Claim(s) rejected: 8-10,13-15,17-20 and 47-55.

Claim(s) withdrawn from consideration: 1-7, 16 and 21-46.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The amendment filed on May 18, 2004 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: the proposed amendment raises new issues that would require further consideration and/or search.

Claims 1-55 are pending.

### ***Election/Restrictions***

Claims 1-7, 16 and 21-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made **FINAL**.

### ***Inventorship***

In view of the papers filed on May 18, 2004, the inventorship in this nonprovisional application has been changed by the deletion of Elissa Ferris.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

In view of the papers filed on May 18, 2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent,

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improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by deletion of Eric Beer and Jianxiong Zhang.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

### ***Response to Amendment***

Applicant's arguments are moot as drawn to the objection of claim 19 since the proposed amendment is not entered. The amendment raises new issues that would require further consideration.

Applicant's arguments are moot as drawn to the rejections of claims 18-20 under 35 U.S.C. 112, 1<sup>st</sup> paragraph since the proposed amendment is not entered. The amendment raises new issues that would require further consideration.

Applicant's arguments are moot as drawn to the rejections of claims 18-20 under 35 U.S.C. 102(b) paragraph since the proposed amendment is not entered. The amendment raises new issues that would require further consideration.

Applicant's arguments are moot as drawn to the rejections of claims 8-10, 13-15, 17-20 and 47-55 under 35 U.S.C. 102(e) paragraph since the proposed amendment is not entered. The amendment raises new issues that would require further consideration.

Applicant's arguments are moot as drawn to the rejections of claims 8-10, 13-15, 17-20 and 47-55 under 35 U.S.C. 102(g) paragraph since the proposed amendment is not entered. The amendment raises new issues that would require further consideration.

***Allowable Subject Matter***

Claims 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Pak whose telephone number is 571-272-0935. The examiner can normally be reached 6:30 A.M. to 5:00 P.M. Monday through Thursday.

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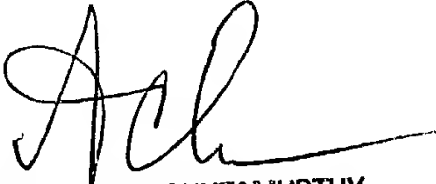
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Yong D. Pak  
Patent Examiner



PONNATHAPU ACHUTAMURTHY  
SUPERVISOR, PATENT EXAMINER  
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